

1 Mark A. Fuller (AZ Bar No. 012149)  
Kenneth M. Motolenich-Salas (AZ Bar No. 027499)  
2 Christopher W. Thompson (AZ Bar No. 026384)  
Gallagher & Kennedy, P.A.  
3 2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
4 Telephone 602 530 8000  
5 *Attorneys for Defendant Nationwide Marketing Services, Inc.*

6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**

8 Experian Information Solutions, Inc.,

Case No. 2:13-cv-00618-SPL

9 Plaintiff,

**REPLY IN SUPPORT OF  
DEFENDANT'S REQUEST TO  
RENEW MOTION TO EXCLUDE OR,  
ALTERNATIVELY, TO FILE  
AMENDED MOTION TO EXCLUDE**

10 v.

11 Nationwide Marketing Services, Inc.,

12 Defendant.  
13  
14

15 Natimark filed a simple one-paragraph request to re-urge a motion the Court  
16 previously denied without prejudice – a request filed at the very procedural stage the Court  
17 indicated the motion would be ripe. Anticipating an objection that the motion was not  
18 narrowly tailored to the summary judgment briefing, Natimark also indicated that it was  
19 prepared to submit a revised motion addressing the specific expert “evidence” that  
20 Experian has now sought to introduce. In response, Experian has filed a 1 1/2 page  
21 opposition which argues (a) that the earlier motion is overbroad (“scattershot”) as it relates  
22 to the summary judgment briefing; and (b) that the previous motion should have been  
23 inserted into the summary judgment reply. We already addressed the first argument, and  
24 remain willing to file a pared-down motion now that the issues have been narrowed. As  
25 for the latter argument, we did in fact argue in our reply (on page 8) that the evidence in  
26 question is inadmissible, and cited the reasons why. (Doc. 263). Rather than taxing the  
27 Court’s patience by rehashing what had already been filed in greater detail, we also referred  
28 back to the earlier motion. (*Id.* at 8, n. 7.) That was and is a perfectly reasonable and

1 efficient approach under the circumstances.

2 It is axiomatic that motions for summary judgment are decided solely on admissible  
3 evidence. Fed.R.Civ.P. 56(e); *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773-74 (9th Cir.  
4 2002). Thus, consistent with the Court's prior orders, this is an appropriate time to  
5 consider the admissibility of "facts" offered by Experian. We respectfully ask the Court to  
6 do so, either by considering the earlier motion denied without prejudice, or by granting  
7 leave to file a comparable motion narrowly directed to what appears in the summary  
8 judgment briefing.

9  
10 RESPECTFULLY submitted this 9<sup>th</sup> day of February, 2016.

11 GALLAGHER & KENNEDY, P.A.

12 By: s/ Mark A. Fuller

13 Mark A. Fuller

14 Kenneth M. Motolenich-Salas

15 Christopher W. Thompson

16 *Attorneys for Defendants*

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on February 9, 2016, I electronically transmitted the attached  
19 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
20 Notice of Electronic Filing to the all CM/ECF registrants of record in this action.

21 s/ Carolyn Sullivan

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